

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

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O.A.NO.287/93

New Delhi this the 1st Day of December, 1993.

Hon'ble Sh. B.N. Dhoundiyal, Member(A)

1. Smt. Tofa Devi
W/O late Sh. Laxmi Narain Saini,
C/O Students Jailors,
Hospital Road,
Bandikui.(Raj.)
2. Sh. Roop Narain
S/O Sh. Laxmi Narain Saini,
C/O Students Jailors,
Hospital Road,
Bandikui.(Raj.)

Petitioners

(By advocate Sh. V.P. Sharma)

versus

1. Union of India
through the General Manager,
Western Railway,
Churchgate, Bombay.
2. The Divisional Railway Manager,
Western Railway, Jaipur.
3. The Secretary,
Railway Board,
Rail Bhawan,
New Delhi.

Respondents

(By advocate Sh. Romesh Gautam)

O R D E R

This O.A. has been filed by Smt. Tofa Devi and her son Sh. Roop Narain who are aggrieved by rejection of their request for compassionate appointment of Applicant No.2.

The main averments made in the O.A. are these. Sh. Laxmi Narain Saini died while working as Cleaner Khalasi under Carriage and Wages Superintendent, Western Railway, Bandikui on 9.9.1972. The family was given a very small amount of family pension and the widow could not seek compassionate appointment due to social compulsions. Her son

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Sh. Roop Narain born on 1.9.1963 was a minor. She made representations on 16.4.1982, 30.9.1982 and her case was taken up by Sh. Rajesh Pilot the then Minister of Transport with the Minister of Railways on 21.8.1989. Vide impugned order dated 24.4.1989 the Railway Board rejected her claim for appointment of her son on compassionate ground. The reason given was that his father had died in the year 1972 and it was not possible to consider the case after 17 years. They have prayed that the respondents be directed to consider the case of Applicant No.2 for appointment on compassionate ground to a post commensurate with his qualification.

In the counter filed by the respondents, the main averments made are these. Under the existing instructions, the appointment on compassionate ground is open to the ward if the widow applies within 6 months from the death of the railway employee. The purpose of the appointment on compassionate ground is that there should be a bread winner to the family of the deceased. This question cannot be kept open indefinitely for 18 years or so. The widow did not apply for appointment for herself and also in 1981 i.e. within one year from the date of attaining the maturity of the eldest son. The maximum time limit of compassionate ground is 5 years and a relaxation of 5 years can be given in certain cases. However, in this this request has been made after 15 years of the death of the employee.

I have gone through the records of the case and heard the learned counsel for the parties. In the Railway Board Circular dated 7.4.1983 it has been provided that when the Railway employee dies in harness while in service before retirement, their son/daughter/widow and near relative can

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apply for compassionate appointment. However, the para extracted below gives the time limit for making compassionate appointment:-

"Normally appointments on compassionae grounds should be made within a period of 5 years ^{from} ~~from~~ the date of occurrence of the event entitling the eligible person to be appointed on this ground. This period of 5 years may be relaxed (where for example the widow cannot take up employment & the sons/daughters are minor) with the approval of the General Manager in deserving cases while compassionate appointments are sought on the ground of an employee losing his life or getting crippled in the course of duty. In other cases relaxation of the 5 year limit will require the approval of the Ministry of Railways for which purpose the requisite reference giving special reasons for the proposed relaxation should be made with the personal recommendation of the General Manager based on the special circumstance obtaining in individual cases."

In the circular dated 18.1.1984 (Annexure R-1)) it is mentioned under head Relaxation that cases of appointment on compassionate grounds should be viewed sympathetically. Where case was once rejected, a fresh request may be re-examined on merits. Cases more than 5 years old may be referred to Board if circumstances warrant consideration.

In a similar case decided on 16.4.1993 by a Division Bench of this Tribunal (O.A.No.2726/92), the following observations have been made:-

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"In any case, the incumbent has to apply for a suitable post within a period of five years. If the contention of the learned counsel is accepted, then the matter of compassionate appointment shall have to be deferred till any of the children of the deceased employee becomes major and the age of majority is 18 years. In normal course it will mean that the matter of compassionate appointment has to be kept open for 18 years which is not the spirit of the circular of the Railway Board."

It was also held that the law relied upon by the learned counsel for the applicant i.e. Smt. Sushma Gosain & Ors. Vs. Union of India : JT 1989(3) SC 170 cannot help the applicant. Agreeing with this view I hold that the applicants are not entitled to the reliefs sought for by them. The widow did not give the name of her eldest son within 6 months and did not apply for her own appointment and even though her son had attained majority on 31.8.1989, ~~she~~ did not care to apply even thereafter. She is already in receipt of pension and has not elaborated as to why this should be treated as an exceptional case. Their case has already been considered by the Railway Board at the instance of the State Minister for the Transport and was rejected.

I, therefore, hold that no relief can be granted by this Tribunal to the applicant. This would not however, preclude the applicant from submitting a second representation to the Railway Board through the General Manager which shall be considered a-fresh by the Competent Authorities in terms of Circular dated 18.1.1984 cited above. The O.A. is disposed of with the above observations.

No costs.

B.N. Dhoundiyal
(B.N. Dhoundiyal) 1/12/93

Member(A)